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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/449,782	11/26/1999	JAMES MCKEETH	MICS:0194	6698

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EXAMINER
BROPHY, MATTHEW J

ART UNIT	PAPER NUMBER
2191	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	09/449,782	MCKEETH, JAMES
	Examiner	Art Unit
	MATTHEW J. BROPHY	2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>28 June 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-5,7,10-15,18-21, and 23-28*.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
    See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Anna Deng/
Primary Examiner, Art Unit 2191

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20100802

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments have been considered but are not persuasive to put the application in condition for allowance.
In remarks, the applicant argues:

As previously discussed, in the rejection, the Examiner cited AAPA as disclosing storing "command line utility output ... at a location" and retrieving "the command line utility output ... at the location identified by the identifier." However, the Examiner admitted that AAPA does not disclose a "system registry database." Instead, the Examiner cited Halva as disclosing storing and retrieving to and from a "system registry database." However, Applicant asserts that the Examiner has not met the burden of showing a prima facie case of obviousness of claims 1, 15, and 21. Instead, the Examiner has simply separated elements of the above-recited claim features so as to find references that the Examiner believes disclose such elements. Applicant reminds the Examiner that when determining differences between prior art and the claimed invention, "the claimed invention as a whole must be considered" (Emphasis added). Further, although the Examiner asserts that "[i]t is a mere use of common sense by one skilled in the art to select and combine such known elements with no new function, i.e., a predictable result," Applicants direct the Examiner below regarding the combination of elements from the cited references. As discussed below, Applicants assert that the cited references are not properly combinable to support a conclusion of obviousness with regard to the pending claims. As such, Applicant asserts the Examiner has not provided any combination of references that disclose storing "command line utility output in a system registry database at a location identified by the identifier."

For at least these reasons, the cited combination does not disclose all elements of independent claims 1, 15, and 21. Accordingly, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a) and allowance of claims 1, 5, 10, 11, 15, 18, 21, and 23-25.

Examiner's Response.
Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant's general argument about the application of the prior art of record to claim 1, 5, 10, 11, 15, 18, 21, and 23-25 was addressed in a previous action. Applicant's remarks regarding the combination of references will be addressed again below.

In Remarks, the Applicant argues:
Deficiencies of the Rejection of Claims 2-4, 7, 12-14, 19, and 20
The Examiner rejected claims 2-4, 7, 12-14, 19, and 20 under 35 U.S.C. § 103(a) as being unpatentable over the combination of AAPA, Hill, Halva, and Buxton.
Claims 2-4, 7, and 12-14 are dependent on claim 1 and claims 19 and 20 are dependent on claim 15. As discussed above with regard to the first ground of rejection under 35 U.S.C. § 103(a), the cited references, taken alone or in hypothetical combination, do not disclose all claimed features of claims 1 and 15. Accordingly, the cited combination does not disclose or suggest all of the elements of the claimed invention, and thus, cannot possibly render the claimed subject matter obvious. Thus, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 103(a) and allowance of claims 2-4, 7, 12-14, 19, and 20.

Examiner's Response:
Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant's general argument about the application of the prior art of record to claim 2-4, 7, 12-14, 19, and 20 was addressed in a previous action. Applicant's remarks regarding the combination of references will be addressed again below.

In remarks, Applicant argues:
Deficiencies of the Rejection of Dependent Claims 26, 27, and 28
Although Applicant believes that dependent claims 26, 27, and 28 are allowable based on their dependency on claims 1, 15, and 21, respectively, Applicant asserts that claims 26, 27, and 28 recite additional features allowable over the cited reference. For example, claim 26 recites "without creating a temporary file," claim 27 recites "without use of a temporary file," and claim 28 recites "without using a temporary file."
First, Applicant notes that the term "temporary file" should be given its "broadest reasonable interpretation consistent with the specification" and "the interpretation that those skilled in the art would reach." See M.P.E.P. § 2111. Accordingly, Applicant notes that the "temporary file" is temporary for purposes of storing the output of a command line utility and using that output by an executing application. See Application, page 1, lines 16-27. Thus, the term "temporary" refers to the use of the file with regard to the use in the described prior art technique, not necessarily in the temporal aspect of the file.
In rejecting claims 26, 27, and 28, the Examiner stated: Here, note that nowhere does Hill suggest that the DIR.txt must be temporary. Further, with respect to the Hlvana reference, while Hlvana describes using temporary variables, Hlvana contemplates the use of both temporary and non-temporary variables as evidenced by, e.g. Claim 2 of Hlvana, where information is stored in an "environment variable" as opposed to the "temporary environment
variables" of claim 4 in Hlvana.
Final Office Action mailed April 26, 2010, page 10.
As noted above, the use the "dir.txt" file describes the prior art technique distinguished in the background of the present application. Indeed, the present application specifically mentions "dir" as one of the "illustrative command line utilities." Application, page 1, lines 11-12. The "dir.txt" file referred to in Hill is necessary for the storage and use of the results of the "dir" command. Thus, to the extent that the results of the "dir" command are to be stored and used by an executing   application, the "dir.txt" is a temporary file necessary for such use.

The Examiner also noted that Hlava "contemplates the use of temporary and non-temporary variables." Final Office Action mailed April 26, 2010, page 10. As argued elsewhere in this response, Applicant asserts that Hlava is deficient for other reasons and is not properly combinable with Buxton and Hill. Thus, Applicant respectfully requests withdrawal of the rejection of claims 26-28 under 35 U.S.C. § 103(a).

Examiner's Response:
Examiner respectfully disagrees. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. the limiting meaning of "temporary" other than temporal) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In Remarks, Applicant argues:
Deficiencies of the Combination
Additionally, Applicant asserts that combination of Buxton with Hill and Hlava is improper and cannot provide the basis for a primafacie rejection under 35 U.S.C. 103(a). In responding to Applicant' s arguments regarding the propriety of the combination, the Examiner stated:
Examiner respectfully disagrees. Applicant's continued discussion of Buxton's "OLE libraries" or "system-level services" is unpersuasive with respect to both the limitations of the invention AND the combination of the references, being that applicant admits that these arguments do not apply to the teachings of the limitations, and that these arguments have been address on the record already, the examiner now addresses the bearing of "OLE libraries" on the combination. As the examiner has quoted in the rejection, Hlvana teaches the advantageous nature of allowing command files to use the Windows registry. (Col. 2, Ln 37-46). Insomuch as both Hlvana and Buxton involve storage of data in the registry the would be obvious to combination to one of ordinary skill in the art at the time of the invention because of the advantages highlighted by Hlvana as well as the particular implementation details of that registry provided by Buxton. Final Office Action mailed April 26, 2010, pages 17-18.
Applicant respectfully maintains that Buxton teaches away from combination with Hill and Halva. Applicant appreciates that the Examiner is not applying the "OLE libraries" of Buxton directly to any recited claim elements. However, this does not render the teaching away aspects of Buxton as inapplicable to the current combination. While Applicant notes the Examiner' s justification for the combination, Applicant respectfully disagrees with such reasons in light of the teaching away arguments previously set forth. The Examiner stated that the combination is obvious because "both Hlava and Buxton involve storage of data in the registry" and "because of the advantages highlighted by Hlava as well as the particular implementation details of that registry provided by Buxton." Final Office Action mailed April 26, 2010, page 18. However, as noted by the Examiner, the advantages provided by Hlava are "allowing the command files to use the Windows registry." Id., pages 17-18. However, this advantage only applies to such "command files" and the use thereof, and does not apply or provide any advantage to the system of Buxton. Hlava is directed to use of a "temporary command file" that is not operable with the techniques of Buxton.
Further, in response to the Examiner' s characterization of Buxton, Applicant notes that Hlava itself teaches away from combination with Buxton. As previously noted, the invention of Buxton clearly is directed to the "system-level service," such as "OLE libraries," that provide a different technique than that of Hlava. Buxton, col. 8, lines 6-8. Buxton is directed to objects used by applications or programs in the context of object- oriented programming techniques. See Id., col. 2, lines 18-34. Applicant notes that Buxton states that the OLE libraries function through the use of WIN32APIs. Id., col. 8, lines 8-9. In contrast, Hlava clearly teaches away from accessing the registry through programs and Windows APIs. Hlava states:
To provide access to Registry data, utility functions can be coded as programs rather than command files. These programs can then access the Registry data by using the Windows APIs. However, this method is somewhat inefficient. Programs are more difficult and time consuming to write and maintain than command files. Therefore, this method detracts from developer productivity relative to a method that uses command files to access the Registry data.
Hlava, col. 1, lines 44-53. (Emphasis added.)
Thus, as noted above, Hlava discloses the use of "command files" as an alternative to registry access through programs using Windows APIs, such as in the techniques of Buxton. Even though the "command files" of Hlava are described as using APIs, Hlava provides this as an alternative to the use of programs and the APIs, such as would be used in the object-oriented programming techniques of Buxton. Accordingly, Applicant asserts that Hlava teaches away from combination with Buxton. Thus, Applicant asserts that one of ordinary skill in the art would not seek to combine the techniques of Hlava, directed to "command files" as an alternative to programs and Windows APIs, with the techniques of Buxton, which rely on OLE libraries and Windows APIs accessible by programs.

Examiner's Response:

Examiner respectfully disagrees. As the applicant notes above, the Examiner has previously stated that Hlvana recognizes the advantage of storage in the Windows registry. Hlvana uses this advantage in the context of command files, which while different Buxton, is not inoperable. Buxton does not teach away from the combination of it's own registry elements with the command files & registry of Hlvana simply because Buxton uses an OLE library (which again, the examiner does not rely on for any element of the rejection) rather than a command file because "the prior art's mere disclosure of more than one alternative does not
constitute a teaching away from any of these alternatives because such disclosure does
not criticize, discredit, or otherwise discourage the solution claimed…." In re Fulton,
391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Further, with respect to applicant's arguments about Hlvana disparaging a combination with the registry API of Buxton, it is again emphasized that the examiner does not rely on the system level service or OLE libraries of Buxton, but instead only the system registry identification elements of Buxton. Therefore, regardless to Hlvana discussion of coding as programs rather than command files, Hlvana does not teach away from the combination as described in the rejection, because Hlvana is not disparaging the element relied on in the rejection, because the examiner does not rely on the system level services or OLE libraries of Buxton, but only the registry storage elements, which are not disparaged by Hlvana.

In Remarks, Applicant argues:

As previously argued, Applicant also maintains that Buxton teaches away from such a combination with Hill and Halva. Hill is a reference directed to the "Windows NT Command Shell." Hill, page 1. Hill is directed to usage of the "command shell," a "command prompt," i.e., a command line, and various commands executed from the "command shell" by typing these commands into the "command prompt." Id. Similarly, Halva is directed to "command files" that are described therein as "a file containing one or more command line operations." Halva, col. 4, lines 10-20. Thus, both Hill and Halva are directed to usage of the "command line" and various commands executed from the command line. In contrast, Buxton discloses "OLE libraries" that are defined as "system- level services which utilize the interfaces defined by the COM specification" that call a "WIN 32 API." Buxton, col. 8, lines 6-8. Applicant asserts that there is a clear difference between a service and a command executed from the command prompt as disclosed in Hill, and between a service and a command line operation as disclosed in Halva. Further, as known to those of ordinary skill in the art and as stated in Buxton, API's are "application program interfaces" which are also quite different than a utility and a "command line utility." As they are described in Buxton, neither "application program interfaces" nor "system-level services" are "executable from a command line prompt," and thus cannot be considered a "command line utility." Applicant asserts one skilled in the art would not seek to combine Hill and Halva, directed to command line usage, with Buxton, directed to usage of system-level services, e.g., OLE libraries. Again, Applicant asserts that Applicant is not arguing against the Examiner's reason for citation of Buxton. However, Applicant is arguing against the combination of Buxton with AAPA, Hill, and Halva. In view of this, Applicant asserts that Buxton discloses "system level services" that are clearly different than a command line utility executed from the command prompt. System-level services, such as the "OLE libraries," are not "executable from a command line prompt," and cannot be considered a "command line utility." Applicant asserts one skilled in the art would not seek to combine Hill and Halva, directed to command line usage, with Buxton, directed to usage of system-level services, e.g., OLE libraries.

With regard to the combination of Hill and Hlava, the Examiner stated:

Examiner respectfully disagrees, furthermore, that the "variables" in Hlvana and the "file" of Hill cannot be combined. While these items are labeled differently, they both essentially comprise data storage of command output. (Compare Hill Page 11, DIR.txt used to store output, with e.g. FIG. 2 of Hlvana). As such, one of ordinary skill in the art would be motivated to uses these two different data storage types as a basis to combine the inventions, to allow the redirection in Hill to be done to a local storage, that might then be interchanged with the Windows Registry as contemplated by Hlvana. While they are different storage types, they are both storage, and are functionally related, and therefore the examiner respectfully disagrees with the Applicant's assertion that these elements are not combinable by one of ordinary skill in the art.

Final Office Action mailed April 26, 2010, pages 19-20.

Again, Applicant maintains that Hill does not disclose any variables that are analogous to or combinable with the "environment variables." It appears that the Examiner relied on the "file" of Hill as combinable with the "variables" of Hlava. Applicant respectfully asserts that these items are not analogous in such a manner as to provide reasons for the combination of Hill and Hlava. Applicant asserts that the Examiner's assertion is conclusory and essentially renders Hlava "unsatisfactory for its intended purpose." See M.P.E.P. § 2143.01 (V). The environment variables of Hlava are stored in the Windows registry, a type of data store. See Hlava, col. 2, lines 37-44. The techniques of Hill are directed to storing the output of command line utilities, such as "dir," in a text file. If the files of Hill were interchangeable with the environment variables of Hlava, there would be no need for the invention described in Hlava to use environment variables. However, because such files are not suitable, Hlava is directed to accessing the registry to allow "full use of the data store as intended" as a "central repository for configuration type information." Id., col. 2, lines 44-46. Substituting the use of a "file" would alter the intended purpose of Hlava and render it unsatisfactory for this purpose of allowing full use of the data store, e.g., registry.

Further, if the Examiner is asserting that the redirection of Hill may be used to redirect command line output to the registry, based on the techniques of Hlava, Applicant asserts that such a conclusion is an impermissible use of hindsight. Such a conclusion is merely a restatement of Applicant' s disclosed invention. That is, as previously noted, Applicant's claims are directed to storing the output of a command line utility in a "system registry database." The redirect command in Hill is inoperable for storing output in a "system registry database," but can only store data in a file. As noted above, Hlava provides "command files" for storing data in environment variables stored in a registry, but Hlava does not provide any evidence that such techniques are operable or suitable for use with a command line utility. Thus, Applicant asserts that the reason for the combination is based on hindsight reconstruction gleaned from Applicant's invention that enables storing of the output of a "command line utility in a "system registry database."

Examiner's Response:

Examiner again respectfully disagrees. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant's arguments with regards to Buxton have been addressed above. Here, Hlvana's environmental variables provide separate storage in rder to access elements that are subsequently stored in the registry (see. e.g. 340, FIG. 3 of Hlvana). Specifically, they environmental variables are not the registry itself, but are used to access the registry. (340, FIG. 3). Therefore, contrary to applicant's assertion, rather than making Hlvana unsatisfactory for its intended purpose, the combination with hill's "dir.txt" file, furthers Hlvana's purpose of using the environmental variables of Hlvana to provide ultimate access to the storage of the registry. (see. E.g. FIG. 2 of Hlvana).